

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

OP.No. 37860 of 2001(F)

PETITIONER:

**P.KAMALAKSHAN,
IIIRD GRADE OVERSEER,
KERALA WATER AUTHORITY,
NAVEL ACADEMY SECTION,
PAYYANNUR, KANNUR DISTRICT.**

**BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH**

RESPONDENTS:

- 1) STATE OF KERALA, REP: BY CHIEF SECRETARY
TO GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2) THE DISTRICT REGISTRAR OF KANNUR,
AT THALASSERY, P.O. THALASSERRY,
KANNUR DISTRICT.**
- 3) THE SUB REGISTRAR,
OFFICE OF THE SUB REGISTRAR,
PAYYANNUR, KANNUR DISTRICT.**

BY GOVT. PLEADER SRILAKSHMINARAYANAN.

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PETITIONER'S EXHIBITS:-

- Ext.P1:** Copy of the G.O.(MS).No.32/1998/Ir.D. Dated 23.3.1998.
- Ext.P2:** Copy of the proceedings No.KWA/CR/MR/E6-7339/2001(4) dated 1.6.2001.
- Ext.P3:** Copy of the interim order dtd.22.11.2001 in CMP.No.51512 of 2001 in OP.No.31612/2001.

RESPONDENTS' EXHIBITS:- Nil.

(true copy)

P.S. TO JUDGE.

kvs/-

T.R. Ramachandran Nair, J.

O.P.NO.37860 of 2001-F

Dated this the 21st day of November, 2007

JUDGMENT

The petitioner is working as IIIrd Grade Overseer in the Kerala Water Authority in Naval Academy Section, Payyannur. The employees of the Water Authority were granted exemption from payment of stamp duty on the execution of House Building Advance deeds and release of deeds, as per Ext.P1 G.O. dated 23.3.1998. The petitioner applied for a House Building Advance which was sanctioned as per Ext.P2 proceedings. Ext.P2 shows that the competent authority has sanctioned an amount of Rs.2,06,000/- as the total loan advance. When he approached the third respondent for registering the mortgage deed, he refused to accept the document without payment of any stamp duty. The main prayer in the writ petition is for a direction to the third respondent to register the mortgage deed executed by the petitioner in respect of the House Building Advance sanctioned as per Ext.P2, without insisting for payment of stamp duty.

2. In C.M.P. No.62060/2001, this court passed an interim order directing the third respondent to register the mortgage deed executed by the petitioner, in respect of the House Building Advance sanctioned as per

Ext.P2, without payment of stamp duty, subject to further orders from this court.

2. In the counter affidavit filed by respondents 2 and 3, it is stated in paragraph 3 that Ext.P1 G.O. has been cancelled as per G.O.(Rt) 13/02/TD dated 7.1.2002 Taxes (E) Department. It is therefore contended that the petitioner is not entitled for exemption from payment of stamp duty.

3. The order dated 7.1.2002 mentioned in the counter affidavit is one withdrawing the order Ext.P1 issued by the Irrigation Department exempting the employees of Water Authority from payment of stamp duty. It is also ordered therein that stamp duty as permissible under law, have to be realised in respect of the transactions covered as per the said order.

4. The above said order was the subject matter of challenge before this court in W.P.(C) No.3961/2005. The question whether exemption granted can be retrospectively withdrawn, was considered while deciding the validity of the said order. The judgment therein is reported in **Vijayakumaran v. State of Kerala** (2007 (2) KLT 48). It was held by this court that such withdrawal of exemption on a retrospective basis, is arbitrary and unenforceable. It was held in paragraph 1 as follows:

“Stamp duty is an additional liability to the borrower. The stamp duty in this case is said to be five per cent of the loan amount, which is substantial. Petitioners have rightly pointed out that they have

taken into account the exemption from stamp duty as an incentive for availing loan and the liability presently created through retrospective withdrawal of exemption is the result of a clear breach of promise. Even though liability for stamp duty is incurred at the time of availing the loan, it adds to increase the cost of debt-servicing because loan amount virtually gets reduced by cost of loan incurred by the borrower and therefore rate of interest has to be reduced on net loan amount. A comparable misfortune for borrowers of house-building-loan is retrospective withdrawal of income tax incentives on house building loans by Government of India which will be equally illegal and unwelcome. In the circumstances, Ext.P2 order demanding stamp duty contrary to the promise made out by Government based on which petitioners availed loan is declared arbitrary and discriminatory and hence unenforceable.”

The learned Single Judge relied upon the principles stated by the Apex Court in **Union of India v. Godfrey Philips India Ltd.** ((1985) 4 SCC 369), in support of the above findings. Learned counsel for the petitioner therefore rightly contended that the issue that is raised in this writ petition is covered by the dictum laid down in the above decision.

5. Herein, the petitioner was sanctioned the loan as per Ext.P2 order dated 1.6.2001. As on that date, he was entitled for exemption from payment of stamp duty as per Ext.P1 order. The withdrawal of exemption is by a later order dated 7.1.2002. The withdrawal of exemption by the retrospective process, cannot be justified in the light of the dictum laid down in the decision reported in Vijayakumaran's case (supra). Hence, the petitioner is entitled for a declaration that he is not liable to pay stamp duty

for registration of mortgage deed in respect of the House Building Advance sanctioned to him as per Ext.P2. As already noticed, as per the interim order passed in this case, the third respondent has been directed to register the mortgage deed, without payment of stamp duty.

Therefore, the original petition is allowed holding that the petitioner is entitled for exemption from payment of stamp duty as per Ext.P1.

No costs.

(T.R. Ramachandran Nair, Judge.)

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